

part 37 of this chapter, and on an ongoing basis, comply with the core principles under section 5h of the Act, and the swap execution facility rules under part 37 of this chapter.

(b) A board of trade that operates both a designated contract market and a swap execution facility, and that uses the same electronic trade execution system for executing and trading swaps that it uses in its capacity as a designated contract market, must clearly identify to market participants for each swap whether the execution or trading of such swap is taking place on the designated contract market or on the swap execution facility.

[77 FR 36699, June 19, 2012]

**§ 38.10 Reporting of swaps traded on a designated contract market.**

With respect to swaps traded on and/or pursuant to the rules of a designated contract market, each designated contract market must maintain and report specified swap data as provided under parts 43 and 45 of this chapter.

[77 FR 36700, June 19, 2012]

**§ 38.11 Trade execution compliance schedule.**

(a) A swap transaction shall be subject to the requirements of section 2(h)(8) of the Act upon the later of:

(1) The applicable deadline established under the compliance schedule provided under § 50.25(b) of this chapter; or

(2) Thirty days after the available-to-trade determination submission or certification for that swap is, respectively, deemed approved under § 40.5 of this chapter or deemed certified under § 40.6 of this chapter.

(b) Nothing in this section shall prohibit any counterparty from complying voluntarily with the requirements of section 2(h)(8) of the Act sooner than as provided in paragraph (a) of this section.

[78 FR 33630, June 4, 2013]

**§ 38.12 Process for a designated contract market to make a swap available to trade.**

(a)(1) *Required submission.* A designated contract market that makes a swap available to trade in accordance

with paragraph (b) of this section, shall submit to the Commission its determination with respect to such swap as a rule, as that term is defined by § 40.1 of this chapter, pursuant to the procedures under part 40 of this chapter.

(2) *Listing requirement.* A designated contract market that makes a swap available to trade must demonstrate that it lists or offers that swap for trading on its trading system or platform.

(b) *Factors to consider.* To make a swap available to trade, for purposes of section 2(h)(8) of the Act, a designated contract market shall consider, as appropriate, the following factors with respect to such swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions;

(3) The trading volume;

(4) The number and types of market participants;

(5) The bid/ask spread; or

(6) The usual number of resting firm or indicative bids and offers.

(c) *Applicability.* (1) Upon a determination that a swap is available to trade on any designated contract market or swap execution facility pursuant to part 40 of this chapter, all other designated contract markets and swap execution facilities shall comply with the requirements of section 2(h)(8)(A) of the Act in listing or offering such swap for trading.

(d) *Removal—(1) Determination.* The Commission may issue a determination that a swap is no longer available to trade upon determining that no swap execution facility or designated contract market lists such swap for trading.

(2) *Delegation of Authority.* (i) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority to issue a determination that a swap is no longer available to trade.

(ii) The Director may submit to the Commission for its consideration any matter that has been delegated in this section. Nothing in this section prohibits the Commission, at its election,

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from exercising the authority delegated in this section.

[78 FR 33631, June 4, 2013]

### Subpart B—Designation as Contract Market

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

#### § 38.100 Core Principle 1.

(a) *In general.* To be designated, and maintain a designation, as a contract market, a board of trade shall comply with:

(1) Any core principle described in section 5(d) of the Act, and

(2) Any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act.

(b) *Reasonable discretion of the contract market.* Unless otherwise determined by the Commission by rule or regulation, a board of trade described in paragraph (a) of this section shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

### Subpart C—Compliance With Rules

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

#### § 38.150 Core Principle 2.

(a) *In general.* The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including:

(1) Access requirements;

(2) The terms and conditions of any contracts to be traded on the contract market; and

(3) Rules prohibiting abusive trade practices on the contract market.

(b) *Capacity of contract market.* The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(c) *Requirement of rules.* The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary infor-

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mation to perform any function described in this section, including the capacity to carry out such international information-sharing agreements, as the Commission may require.

#### § 38.151 Access requirements.

(a) *Jurisdiction.* Prior to granting any member or market participant access to its markets, a designated contract market must require that the member or market participant consent to its jurisdiction.

(b) *Impartial access by members, persons with trading privileges and independent software vendors.* A designated contract market must provide its members, persons with trading privileges, and independent software vendors with impartial access to its markets and services, including:

(1) Access criteria that are impartial, transparent, and applied in a non-discriminatory manner; and

(2) Comparable fee structures for members, persons with trading privileges and independent software vendors receiving equal access to, or services from, the designated contract market.

(c) *Limitations on access.* A designated contract market must establish and impartially enforce rules governing denials, suspensions, and revocations of a member's and a person with trading privileges' access privileges to the designated contract market, including when such actions are part of a disciplinary or emergency action by the designated contract market.

#### § 38.152 Abusive trading practices prohibited.

A designated contract market must prohibit abusive trading practices on its markets by members and market participants. Designated contract markets that permit intermediation must prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that must be prohibited by all designated contract markets include front-running, wash trading, pre-arranged trading (except for certain transactions specifically permitted under part 38 of this chapter), fraudulent trading,